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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,064	12/18/2001	Frank H. Ferrandino	0755-4112US1	3188

7590

11/13/2003

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345 Park Avenue  
New York, NY 10154-0053

EXAMINER
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YUN, JURIE

ART UNIT	PAPER NUMBER
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2882

DATE MAILED: 11/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/024,064	<b>Applicant(s)</b> FERRANDINO ET AL.	
	<b>Examiner</b> Jurie Yun	<b>Art Unit</b> 2882	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 October 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5,7-10,27,28,30-36,38-49,54 and 55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5,7-10,36,38-49,54 and 55 is/are allowed.
- 6) ☒ Claim(s) 27 and 30-35 is/are rejected.
- 7) ☒ Claim(s) 28 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
     If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
     a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

### DETAILED ACTION

1. The amendment filed 10/20/03 has been entered.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 27 and 30-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miyake et al. (USPN 5,848,119).
4. With respect to claims 27 and 31, Miyake et al. disclose an X-ray fluorescence system comprising: an X-ray element (42 & 43) with a first end and a second end; an aperture (51) disposed on the second end of the element. The X-ray element (42 & 43) is an X-ray focusing element. Miyake et al. do not disclose a vacuum source connectable to the aperture (51) for evacuating the aperture. However, Miyake et al. disclose the whole system to be in a vacuum container (56) to include the aperture. It would have been obvious to one of ordinary skill in the art at the time of the invention to have a vacuum source connectable to the aperture for evacuating the aperture since this is functionally equivalent; both apertures are in vacuum.
5. With respect to claim 30, Miyake et al. disclose the X-ray element is an X-ray detector (45-46-47).

6. With respect to claim 32, Miyake et al. disclose the aperture (51) is vacuum sealed to the X-ray element (42 & 43) since these elements are housed together in vacuum (56).

7. With respect to claims 33-35, Miyake et al. disclose an X-ray source (41) vacuum sealed to the first end of the X-ray element (42 & 43) since these elements are housed together in vacuum (56). Miyake et al. also disclose a vacuum source connectable to the X-ray source for evacuating the X-ray source, and the vacuum source being connectable to the aperture and the vacuum source connectable to the X-ray source are the same vacuum source, since these elements are all housed together in vacuum (56).

#### ***Allowable Subject Matter***

8. Claim 28 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The following is a statement of reasons for the indication of allowable subject matter: Prior art fails to disclose the sample maintained at atmospheric pressure in the system of claim 27.

9. Claims 1-5, 7-10, 36, 38-49, 54, and 55 are allowed for the reasons cited in the previous office action.

#### ***Response to Arguments***

10. Applicant's arguments filed 10/20/03 have been fully considered but they are not persuasive. Miyake discloses the whole system to be in vacuum (Fig. 3, 56). This

implies that somewhere in the system is an aperture for a vacuum source. The location of the aperture is not patentably relevant and applicant has not pointed out any new or unexpected results.

### ***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jurie Yun whose telephone number is 703 308-3535. The examiner can normally be reached on Monday-Friday 8:30-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Glick can be reached on 703 308-4858. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-0956.



Jurie Yun  
November 4, 2003

Craig E Church